

Vermont Statutes and Rules Governing Residential Placement

Vermont Statute § 2958 Governing the Residential Placement Review Team and Residential Placements

<http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=16&Chapter=101&Section=02958>

(a) A school district shall notify the parents and the commissioner when it believes residential placement is a possible option for inclusion in a child's individualized education plan.

(b) The commissioner may establish from within the department a residential placement review team. At the discretion of the commissioner, other persons not employed by the department may be appointed to serve on the residential placement review team. The team shall make every effort to assist school districts and parents in understanding the range of educational options available as early as possible in the planning process for the child. The team shall:

- (1) advise school districts on alternatives to residential placement;
- (2) review each individualized education plan calling for residential placement of a student to consider whether the student can be educated in a less restrictive environment;
- (3) assist school districts in locating cost effective and appropriate residential facilities where necessary;
- (4) request a new individualized education plan where it believes that appropriate alternatives to residential placement are available; and
- (5) offer mediation as a means of resolving disputes relating to the need for residential placement or the particular residential facility recommended for a child with a disability.

(c) The state board of education shall by rule establish policies and procedures for the operations of the residential placement review team. The rules shall be consistent with federal law and, at minimum, shall include the following:

- (1) provision for the commissioner to initiate a due process proceeding to challenge the need for residential placement where the team believes that a less restrictive educational placement is both available and appropriate for the child with a disability, and to reimburse the school district and the parents or guardian of the child for reasonable costs and attorney fees in the event the commissioner does not prevail;
- (2) provision for technical assistance, plan for correction or withholding of funds under this section where a school district places a child in a residential facility more expensive than an available and appropriate alternative residential facility, however, such withholding of funds shall not exceed the difference between the cost of the two facilities and the rule shall provide an opportunity for appeal of the withholding; and
- (3) procedures and timelines to ensure that residential placement of children with disabilities is not delayed or disrupted so as to adversely affect the children.

(d) Whenever a residential placement is determined to be necessary and appropriate for a child with a disability, the individualized education plan team shall include in the child's plan goals and objectives designed to reintegrate the child into a local school district.

(e) Costs for residential placement shall be reimbursed under subchapter 2 of this chapter only if the residential facility is approved by the state board of education for the purposes of providing special education and related services to children with disabilities. (Added 1989, No. 107, § 5; amended 1995, No. 157 (Adj. Sess.), § 22.)

Vermont State Board of Education Rule 2228 Governing Special Education
<http://www.state.vt.us/educ/new/pdfdoc/board/rules/2220.pdf#page=6>

2228 Special Education Approval of Independent Schools

2228.1 (1) In order for an in-state independent school to receive approval for purposes of Rules 2224.2 and 2228.2 and 16 VSA §2958 (e), it must obtain general independent school approval pursuant to Rule 2200, and also receive approval for special education purposes from the State Board of Education after a determination that its staff, programs and facilities meet state and federal special education standards.

(2) Limitation of Special Education Approval

Each special education approval may be limited to one or more categories of disability, as defined in Rule 2362.1, according to the services the school provides.

(3) Out-of-state Programs

Unless otherwise determined by the Vermont State Board of Education, in order for an out-of-state independent school to be approved for special education purposes by the Vermont State Board of Education, it must be approved by the host state for the purpose of providing special education and related services to children with disabilities within that state. Any limitation by the host state on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.

2228.2 (1) Placement Prohibition

No responsible agency, as defined by Rule 2360.2 shall make a special education placement in an independent school that has not been approved for special education purposes unless the placement is pursuant to:

- (a) a subsection (2) of this rule,
- (b) a court order, or

- (c) a due process order pursuant to Rule 2364.3.5.

Nor shall such placement be made in an independent school that serves special education students who are in a category of disability different from that under which the student was determined to be eligible for special education.

(2) Exceptional Circumstances – Approval Process

Upon application by a responsible agency, the commissioner may permit, in exceptional circumstances, a special education placement in an independent school that is approved pursuant to Rule 2200 but has not received approval for special education purposes pursuant to Rule 2228.1, Rule 2366.2.2(7) notwithstanding, in instances in which the commissioner grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the commissioner's decision may file an appeal with the State Board of Education pursuant to 16 VSA §828.

(a) Exceptional circumstances exist when:

- (i) after reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to Rule 2228.1 to serve students with the category of disability under which the student was determined to be eligible for special education; and
- (ii) the proposed placement is deemed appropriate by the student's IEP team.

(b) The commissioner may specify conditions under which the placement is to be carried out.

2228.3 In order to obtain special education approval, an independent school shall meet standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least the following areas:

- (1) admissions;
- (2) least restrictive environment;
- (3) discipline;
- (4) graduation;
- (5) faculty qualifications; and

- (6) faculty-student ratios, including ratios that meet the Vermont School Quality Standards for the direct provision of special education and related services or consultation regarding the provision of special education and related services to publicly-placed students on IEPs.

2228.3.1 In order to obtain special education approval, an independent school shall coordinate with sending responsible agencies, parents, public agencies and other service providers serving a student by:

- (1) maintaining educational records and disclosing them to the sending responsible agency and the student's parents;
- (2) participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;
- (3) implementing IEPs; and
- (4) providing prior notice to the sending LEA regarding the need for a change in a student's program or placement, including long-term suspension or expulsion.

These practices shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate.

2228.3.2 An independent school shall satisfy the state licensure requirements for personnel who are responsible for the provision or supervision of special education and related services.

Vermont State Board of Education Rule 2366.9 Governing the Residential Placement Review Team and Residential Placements

<http://www.state.vt.us/educ/new/pdfdoc/board/rules/2360.pdf#page=81>

2366.9 Residential Placements

2366.9.1 State-Operated Residential Schools and Day Programs

Funding for state-operated residential schools and day programs shall be in accordance with 16 VSA §2948(f).

2366.9.2 Individual Residential Placements

Funding of individual residential placements shall be in accordance with 16 VSA Chapter 101, subchapter 2 and 16 VSA §2958(c)(2). Applications for funding of individual residential placements shall undergo the residential review process set forth in Rule 2958.

2366.9.2.1 Residential Placement Review Team

As needed, the Commissioner may appoint Department of Education employees and others to a residential placement review team. Members of the team shall be subject to the confidentiality provisions of state and federal law. The team shall have those responsibilities set forth in 16 VSA §2958(b). The team shall be composed of at least two members: (1) one who has knowledge about the child's area of disability and (2) the other who has knowledge of available resources and services in the school district's region of the state.

2366.9.2.2 Notification of the Commissioner

- (a) Each school district shall notify the Commissioner, in writing, with a copy sent to the student's parents, that residential placement is a possible option for inclusion in the student's IEP when there has been:
 - (1) A recommendation by the Evaluation and Planning Team for residential placement;
 - (2) A unilateral residential placement by the parents or by another state agency, pursuant to 16 VSA §2942(7);
 - (3) A recommendation by another state agency for residential placement;
 - (4) An annual review for a student already in residential placement; or
 - (5) When any circumstance warrants consideration by the school district that residential placement is a possible option for inclusion in a student's IEP.

Nothing herein shall be construed to mean that a student who falls within one of the above five categories necessarily requires residential placement. Additionally, nothing herein shall be construed to mean that notice to the Commissioner represents a decision of the IEP participants.

- (b) Reimbursement for residential placements shall be for placements from the date the Department receives the notification in accord with this section. This requirement shall not apply to emergency placements made due to life-threatening events to a child or to other exceptional circumstances approved by the Commissioner or designee

after request by a school district and recommendation of the residential review team.

2366.9.2.3 Timelines

Each school district shall notify the Commissioner of its belief that residential placement is a possible option at the time it is considering or reconsidering the placement of a student with disabilities. Such notice shall be given as soon as possible so that the involvement of the review team, if deemed necessary by the Commissioner, does not interfere with the timelines for the placement decision.

2366.9.2.4 Receipt of IEP

After the IEP team has made a determination that a student requires residential placement, the school district shall forward the following documents to the Commissioner within five working days of the IEP's completion:

- (1) The student's most recent Evaluation Plan and Report;
- (2) Current IEP;
- (3) Residential placement application form; and
- (4) Any other relevant information.

2366.9.2.5 Residential Review Team Procedures

- (1) Upon receiving notice under Rule 2366.9.2.2 or the IEP under Rule 2366.9.2.4, or upon request by a parent to establish a residential placement review team to review his or her child's case, the Commissioner may establish a review team. Within ten working days of receipt of the notice, the IEP or the parental request, the Commissioner or his designee shall notify the school district and the parents whether or not a review team has been constituted or reconvened.
- (2) The review team or any designated member thereof shall investigate the need for residential placement of a student and provide technical assistance to the school district concerning the need for residential placement, alternatives to residential placement, and alternative cost-effective residential facilities.
- (3) Within 30 calendar days of its establishment, the team, after investigation, may take any of the following actions:

- (a) Advise the school district and parents on alternatives to residential placement;
 - (b) Review the individualized education program calling for residential placement of a student to consider whether the student can be educated in a less restrictive environment;
 - (c) Assist the school district in locating cost effective and appropriate residential facilities where necessary;
 - (d) Request, but not require, a new individualized education program when it believes that appropriate alternatives to residential placement are available; or
 - (e) Offer mediation as a means of resolving disputes relating to the need for residential placement, the particular residential facility recommended for a student with a disability or the associated costs.
- (4) The Commissioner may waive any provision of Rule 2366.9.2.5, not otherwise inconsistent with law for emergency placements or administrative efficiency.
- (5) Where the team or its designee finds that the placement practices or policies of a school district are substantially inconsistent with least restrictive environment provisions of state or federal law, it may require the agency to submit a plan of correction.
- (6) Where the team or its designee recommends and the Commissioner finds that a residential placement has been effectuated which is substantially more costly than available, appropriate, alternative residential facilities, the amount of reimbursement shall be calculated using the less costly placement. In such an instance, the school district may appeal the decision of the Commissioner to the State Board of Education in accordance with Rule 1230.

2366.9.2.6 Due Process Hearing

When the residential review team recommends that a student does not require residential placement, the Commissioner may initiate a special education due process hearing under Rule 2365.1.6 to determine the appropriate placement for the child.